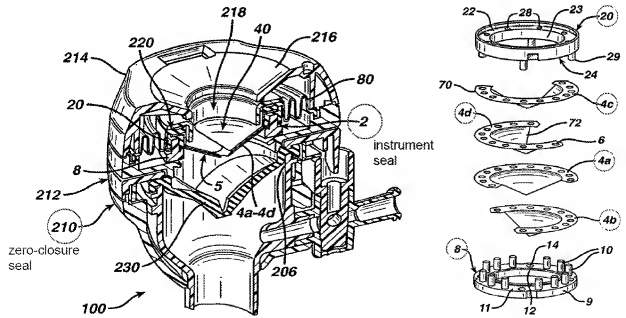
REMARKS

The undersigned appreciates the courtesies extended by the Examiner during the telephone interview on 10-June-2010. While no agreement was reached during the interview, the undersigned believes the interview was very productive. The undersigned focused on several features that distinguish the present claims over the prior art of record. Some of those distinctions will be discussed below.

Introduction

Trocars are used to prevent the escape of fluid or gas during endoscopic surgical procedures. Trocars typically have two distinct types of seals: (i) a zero-closure seal intended seal the trocar when there is not an instrument passing therethrough, and (ii) an instrument seal intended to seal the trocar as instruments are passed therethrough. Central to this pre-appeal is the difference between these two distinct types of trocar seals.

The present claims are directed a novel instrument seal. One embodiment of the claimed invention is depicted in Figs. 7 and 2, portions of which are reproduced below with notations:



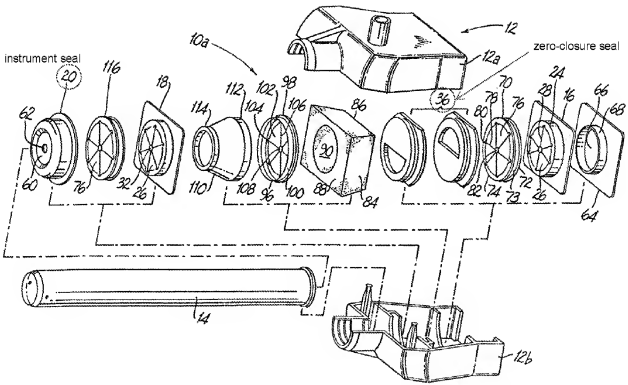
As shown in this embodiment, the instrument seal (2) is proximal of the zero-closure seal (210). The instrument seal (2) shown in the exploded view comprises a first substantially rigid ring (8)

and a second substantially rigid ring (20). A plurality of separate semicircular seal segments (4a-4d) are compressed between the rings (8, 20) and arranged in a conical shape. Each seal segment (4a-4d) has a circumference greater than 180 degrees.

102 over Green

The Office Action rejected claims 25-36 and 38-40 under 35 U.S.C. 102(b) as being anticipated by Green (US 6,569,120). Applicants traverse this rejection and request reconsideration because the cited portions of the reference do not teach or suggest the combination as currently claimed.

Like most trocars, Green has two seals: an instrument seal and a zero-closure. Fig. 5 of Green is reproduced below with annotations:



The proximal sealing gasket assembly (36) is intended to seal the trocar when an instrument is not positioned in the path (Green at 5:49-62). The proximal seal (36) would be referred to in the art as a "zero-closure seal". In contrast, the distal bellows seal (20) is intended to seal against surgical instruments when they are positioned in the trocar (Id. at 6:11-16). The distal seal (20)

would be referred to in the art as an "instrument seal". Accordingly, Green has a proximal zero-closure seal (36) and a distal instrument seal (20).

The Office Action is premised on comparing Green's proximal zero-closure seal (36) to the instrument seal as currently recited in the claims. (Office Action at 2). Such a comparison is improper for at least two reasons, either one of which by itself would justify withdrawing the rejection.

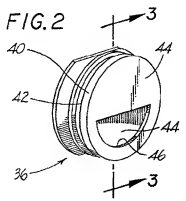
First, independent claims 25, 30, and 34 each recite a seal with semicircular components arranged in "a conical shape". The particular claim limitations are as follows:

Claim 25: a seal assembly having a plurality of separate semicircular seal segments arranged in a conical shape, each seal segment having a circumference greater than 180 degrees and being adapted to seal against objects positioned through the seal

Claim 30: a plurality of semicircular elastomeric members compressed therebetween and forming a conical shape, the elastomeric members circumscribing an aperture in an interwoven pattern and cooperate to sufficiently seal against objects positioned within the aperture to maintain gas pressure in the abdominal cavity during endoscopic surgical procedures

Claim 45: a plurality of semicircular elastomeric members compressed therebetween and forming a conical shape, the elastomeric members circumscribing an aperture in an interwoven pattern and cooperate to sufficiently seal against objects positioned within the aperture to maintain gas pressure in the abdominal cavity during endoscopic surgical procedures

In contrast, Green's proximal zero-closure seal (36) is arranged in a planar configuration, as is apparent from Figs. 2-3:



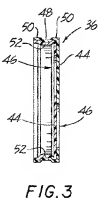


FIG.3

Since the independent claims all recite a "conical shape", the comparison with Green's planar seal (36) is improper. As such, independent claims 25, 30, and 34 are novel over Green.

Second, the independent claims 25, 30, and 34 each recite a seal with semicircular components arranged to create an instrument seal. The particular claim limitations are as follows:

Claim 25: a seal assembly having a plurality of separate semicircular seal segments arranged in a conical shape, each seal segment having a circumference greater than 180 degrees and being adapted to seal against objects positioned through the seal

Claim 30: a plurality of semicircular elastomeric members compressed therebetween and forming a conical shape, the elastomeric members circumscribing an aperture in an interwoven pattern and cooperate to sufficiently seal against objects positioned within the aperture to maintain gas pressure in the abdominal cavity during endoscopic surgical procedures

Claim 45: a plurality of semicircular elastomeric members compressed therebetween and forming a conical shape, the elastomeric members circumscribing an aperture in an interwoven pattern and cooperate to sufficiently seal against objects positioned within the aperture to maintain gas pressure in the abdominal cavity during endoscopic surgical procedures

In contrast, Green's proximal sealing gasket assembly (36) is intended to seal the trocar when an instrument is not positioned in the path (Green at 5:49-62). The proximal seal (36) would be referred to in the art as a "zero-closure seal". The Office Action has not accurately cited to any portion of Green in support on the proposition that Green's proximal zero-closure seal (36) can function as an instrument seal as recited in the claims. Instead, Green uses a separate distal instrument seal (20) to seal against instruments. As such, independent claims 25, 30, and 34 are novel over Green.

Based on at least the two foregoing differences, independent claims 25, 30, and 34 are novel over Green and should therefore be in a condition for allowance. Rejected claims 26-29, 31-33, and 35-36, 38-40 should also be in a condition for allowance by depending from allowable independent claims. Applicants note, however, that the dependent claims recite further limitations that distinguish over the art of record.

Copending Applications

The Examiner should note the following copending United States patent applications:

Application	Status
10/815356	Final Rejection Mailed - Pre-Brief Conference Requested
10/943215	Final Rejection Mailed
10/943214	Final Rejection Mailed
10/943221	Reply Brief Noted by Examiner
10/943222	Notice of Appeal Filed
10/943220	Notice of Allowance Mailed
11/217673	Patented Case 7,677,392
10/943218	Response to Non-Final Office Action Entered and Forwarded to Examiner
10/943213	Patented Case 7,597,701

The foregoing statuses were pulled from PAIR on 06/10/2010. The Examiner is encouraged to review each of these file wrappers, including the pending claims, all art of record, and any rejections. Details of these cases are available through PAIR and the Office's databases. No representation is made or intended that the foregoing cases are material to patentability of the present claims, or that the foregoing list is comprehensive.

Conclusion

Based on the foregoing, all of the pending claims are in a condition for allowance. While Applicants have traversed the rejections on certain grounds, the Office should appreciate the claims may be patentable on other grounds not specifically addressed in this paper. Nothing herein shall diminish or preclude other reasons the claims are patentable, and Applicants reserve all rights and arguments under the law. Accordingly, Applicants traverse all rejections and request an early notice of allowability.

Respectfully submitted,

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